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10/721,299	11/24/2003	William A. Hall	54173-44719	7067

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EXAMINER

HUYNH, LOUIS K

ART UNIT	PAPER NUMBER
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3721

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/721,299
Filing Date: November 24, 2003
Appellant(s): HALL, WILLIAM A.

Joseph M. Rolnicki
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/10/2006 appealing from the Office action mailed 10/06/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 5,964,365

PEEPLES et al.

10-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- A. Claims 1-5, 7-9, 11-14, 16-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Peeples et al. (US 5,964,365).

Art Unit: 3721

- With respect to Claims 1-5, Peeples discloses a food packaging closure including: a tubular body (20) and a lid (60); wherein the tubular body (20) includes a first open end defined by a ridge (24) that receives the lid (60), and a second open end defined by a vertical wall (42) that removably attaches to a pan (30) of food product (col. 3, lines 62-64), the first open end is larger than the second open end, and a hollow interior bore is defined between the first open end and the second open end.
- With respect to Claims 7-9, the tubular body (20) includes a rim (24, 26) extending around the first open end and projecting outwardly from the tubular body; wherein the lid (60) having a lip (62) that engages the rim (24, 26) of the tubular body (20) and the lid is completely removable from the tubular body.
- With respect to Claim 11, the tubular body (20) has a rectangular configuration (FIG. 1).
- With respect to Claim 12, the tubular body (20) has a tapering configuration from the first open end to the second open end (FIG. 5A).
- With respect to Claim 13, the wall thickness at the first end (lip 44) is larger than wall thickness at the second end (42) (FIGS 5A & 5B).
- With respect to Claims 14, 16-18 and 20, Peeples discloses a method of preserving food product in food pan (30) including the step of: providing a rectangular tubular body (20) having a first open end defined by a ridge (24), a second open end defined by a vertical wall (42), and a hollow interior bore extending from the first open end to the second open end, positioning the second open end around the opening of the food pan (30), providing a lid (60), and removably attaching the lid (60) to the tubular body (20) (FIGS. 5A, 5B).

Art Unit: 3721

B. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peeples et al. (US 5,964,365).

- With respect to Claim 6, Peeples discloses a food packaging closure including: a tubular body (20) and a lid (60); wherein the tubular body (20) includes a first open end defined by a ridge (24) that removably receives the lid (60), and a second open end defined by a vertical wall (42) that is configured to removably attach to a pan (30) of food product (col. 3, lines 62-64). The closure of the Peeples meets all of Appellant's claimed subject matter but lacks the specific teaching of the second open end being resilient. However, the configuration of the closure, as illustrated in FIGS 5A and 5B, has reveals that the closure must be molded and plastic is an obvious choice of material for molding into such configuration and for preventing the food handler from the risk of scalding from spillage or contact with the food pan. Plastic material is known to be resilient and stretchable.
- With respect to Claim 15, the closure of the Peeples meets all of Appellant's claimed subject matter but lacks the specific teaching of the second open end being resilient. However, the configuration of the closure, as illustrated in FIGS 5A and 5B, has reveals that the closure must be molded and plastic is an obvious choice of material for molding into such configuration and for preventing the food handler from the risk of scalding from spillage or contact with the food pan. Plastic material is known to be resilient and stretchable.

C. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peeples et al. (US 5,964,365) in view of AAPA (Appellant Admitted Prior Art).

Peeples teaches that the closure is designed for the easy transport and storage of pans or dishes used primarily in the preparation, cooking and storage of foods; and it is well known that pans or dishes have a circular configuration and is admitted by AAPA in the Remarks filed 07/11/2005 on page 10, line 18-20; therefore it would have been obvious to an ordinary skilled person in the art, at the time the invention was made, to have modified the closure of Peeples by having shaped the closure with a circular configuration in order to accommodate circular pan, as admitted by AAPA.

(10) Response to Argument

- Appellant contends that the pan (30) disclosed in the Peeples reference (US 5,964,365) is not equivalent to the claimed packaging. This is not found persuasive because the pan is a container that contains a food product for transportation which meets the definition of packaging, thus is considered to be equivalent to the claimed packaging.
- Appellant further contends that the reference to Peeples (US 5,964,365) does not contain any suggestion of a food packaging closure apparatus having identity of the claimed “means for attaching the body second end to packaging of a food product” in claim 1 or “means for removably attaching the body second end to packaging of a food product” in claim 2. This is not found persuasive because Peeples discloses a food packaging closure that includes a tubular body (20) having a vertical wall (42), which is equivalent to the “means for attaching” of claim 1 or “means for removably attaching” of claim 2, that attaches the second end of the tubular body (20) to the pan (30). See col. 3, lines 62-64.

Regarding the “means for attaching” being the resilience of the body (16) described in the Summary of Claimed Subject Matter in the present Appeal Brief, the Board is respectfully directed to page 7, lines 9-15, which states: “However, a majority of the products with which the apparatus of the invention is intended to be used have a resilience at their exterior surface. Thus, with the tubular body (16) formed of a somewhat rigid plastic material, passing the food product (14) through the interior bore of the tubular body (16) will result in the second end edge (34) of the tubular body compressing the food product and engaging in a tight sealing fit around the packaging (56) of the food product,” it is clear that, the “means for attaching/removably attaching” does include rigid material; therefore, the vertical wall (42) of the tubular body (20) disclosed in the Peebles reference is equivalent to the “means for attaching/removably attaching” as claimed.

- Appellant further contends that the Peebles’ tubular body (20) does not have a rim extending around the first end of the tubular body and projecting outwardly from the tubular body as claimed in claim 7. This is not found persuasive because the tubular body (20) of Peebles include a rim (24, 26) extending around the first open end of the tubular body and having an upper portion of the rim (24) engageable with the lid (60) and a lower portion (26) projecting outwardly from the tubular body (20).
- Appellant again contends that the pan (30) in the reference to Peebles is not a food packaging, and thus does not anticipate the method claim 14. This is not found persuasive because the pan is a container that contains a food product for transportation which meets the definition of packaging, and thus is considered to be equivalent to the

Art Unit: 3721

claimed food packaging. Therefore, the reference to Peeples fully anticipates the method claims 14, 16, 18 and 20.

- Appellant further contends that the rejection of claims 6 and 15 is based on hindsight. This is not found persuasive because: 1) the packaging closure apparatus disclosed in the Peeples reference must be formed by molding due to its particular shape as illustrated in FIGS. 5A & 5B; 2) the packaging closure apparatus disclosed in the Peeples reference is for insulating the pan's contents while minimizing the food handler from the risk of scalding from spillage or contact with the pan (col. 1, lines 38-43); and 3) the assignee of the Peeples patent is Igloo Product Corp. which primarily manufactures thermal products from thermoplastic material; therefore, it would have been obvious to a skilled person in the art to recognize that the packaging closure apparatus disclosed in the Peeples reference is molded from plastic, and plastic is known to be resilient and stretchable to a certain degree regardless whether it is soft or somewhat rigid.
- Appellant further contends that the rejection of claims 10 and 19 are also based on hindsight. This is not found persuasive because: 1) FIGS. 1 of the Peeples reference clearly show the rectangular pan (30) and thus the cross section of the tubular body (20) is rectangular; and 2) Appellant admitted that pan is typically round (Remarks filed 7/11/2005, on page 10, lines 18-20) and thus it would have been obvious to a skilled person in the art, at the time of the invention, to have modified the packaging closure apparatus of Peeples by having provided the tubular body with a circular cross section in order to accommodate such typical round pans, as admitted by Appellant.

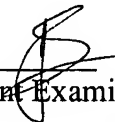
Art Unit: 3721

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

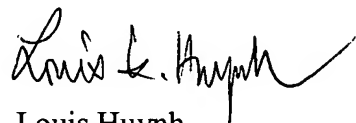
For the above reasons, it is believed that the rejections should be sustained.

Conferees:

John Sipos 
Senior Patent Examiner

Stephen Gerrity 
Primary Examiner

Respectfully submitted,


Louis Huynh
Primary Examiner